

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-5884

PETITION OF DAY DEVELOPMENT COMPANY, LC

(Hearing held May 28, 2003)

OPINION OF THE BOARD

(Effective date of Opinion, July 18, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.534. The petitioner proposes to construct a new single-family dwelling that requires a variance of 0.80 feet as it is within 24.20 feet of the front lot line. The required front lot line setback is twenty-five (25) feet.

Roger K. Bain, Esquire, and James Glascock, engineer, represented the petitioner at the public hearing.

The subject property is Lot 59, Block A, Cross Creek Club Subdivision, located at 13003 Alpenhorn Way, Silver Spring, Maryland, 20904, in the R-200 Zone (Tax Account No. 03315364).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a new single-family dwelling.
2. Mr. Glascock testified that the newly constructed single-family dwelling must accommodate a 25-foot conservation easement at the rear of the property and that the property's conservation easement takes up 20-25% of the lot.
3. Mr. Bain stated the Department of Permitting Services (DPS) issued a building permit for the dwelling and that the need for a variance was created through a construction error and the error was determined during a routine wall-check. Mr. Bain stated that the denial of the variance would work an economic hardship for the petitioner.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot has no exceptional topographical or other conditions that are peculiar to the property and that are not shared with the adjoining lots. The Board finds that the adjoining lots on Alpenhorn Way are also affected by the conservation easement. See, Exhibit No. 11 (subdivision plat).

The Board notes that the existence of an improvement on the property is not a zoning reason to grant a variance. *Chester Haven Beach Partnership v. Board of Appeals For Queen Anne's County*, 103 Md. App. 324, 334, Fn. 3, 653 A.2d 532, (1995). See also, *Cromwell v. Ward*, 102 Md. App. 691 (1995).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 0.80 feet from the required twenty-five (25) foot front lot line setback for the construction of a new single-family dwelling is denied.

The Board adopted the following Resolution:

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 18th day of July, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.